YUE MUN NYOK

v.

MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
PS GILL JC
[HABEAS CORPUS NO. 44-24-91]
21 JANUARY 1992

ADMINISTRATIVE LAW: *Detention order - Copy served not signed by Minister - Extension of order - Revocation of extension order - Detention after revocation of extention order - Effect of defective order on subsequent orders - Dangerous Drugs Act (Special Preventive Measures) 1985 (Act 311) ss. 6(1), 9(1).*

Applicant was arrested in Kuala Lumpur on 29 June 1989 and later charged in the Magistrate's Court for an offence relating to the possession of drugs.

On 4 February 1990, he was set free at the Magistrate's Court, Kuala Lumpur. As soon as he had left the Court, he was re-arrested and detained by the police.

Subsequently, on 2 April 1990, the Deputy Minister of Home Affairs ("the Minister") made a detention order directing the detention of the applicant for one year with effect from 2 April 1990 at the Rehabilitation Centre, Pulau Jerejak, Pulau Pinang, under s. 6 (1) of the Dangerous Drugs Act (Special Preventive Measures) 1985 (Act 311).

The copy of the detention order served on the applicant was not signed by the Minister, but bore rubber stamped words: "T.T. Dato' Megat Junid bin Megat Ayob" in the space intended for his signature.

On 2 April 1991, the applicant was served with an extension order extending his term of detention for a further two years with effect from 2 April 1991.

On 15 October 1991, applicant was transferred from the Rehabilitation Centre, Simpang Rengam, Johore. On 31 October 1991 the Minister revoked the extension order served on 1 April 1991.

Following the revocation of the extension order, applicant was placed in police custody at Kluang Police Station. No reasons were given for such detention nor the law under which he was so detained.

It was argued on behalf of the applicant that as the copy of the initial detention order served on him was not signed by the Minister, it was defective *vis-a-vis* s. 9(1) of the Act. Consequently, applicant's detention was illegal. The subsequent extension order was, therefore, also invalid and the revocation thereof of no legal effect.

Held:

[1] The initial detention order dated 2 April 1990, was invalid as the copy served on the applicant was unsigned and, therefore, not in complience with s. 9(1) of the Act.

[2] The defect in the first order could not be cured by the extension order effective from 1 April 1991, nor by the revocation order dated 31 October 1991.

[3] The initial detention of applicant being technically defective, his continued detention was bad in law.

[Application for habeas corpus granted and applicant ordered to be set free.]

Cases referred to:
P.P. v. Koh Yoke Koon [1988] 2 MLJ 301 ***(cons)***
Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia [1990] 2 MLJ 297 ***(cons)***
Lee Weng Kin v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. [1991] 2 MLJ 474 ***(cons)***
Ex parte Johannes Choeldi & Ors. [1960] MLJ 184 ***(cons)***

Legislation referred to:
Dangerous Drugs Act (Special Preventive Measures) 1985 (Act 311), ss. 6(1), 9(1)

For the applicant - Tan Hock Chuan; M/s. Kam Woon Wah
For the respondent - Mahmud Abdullah; Kementerian Hal Ehwal Dalam Negeri

JUDGMENT

PS Gill JC:

The applicant alleges:

(a) that he was arrested on 29 June 1989 in Kuala Lumpur and thereafter was detained by the police for about 2 weeks and later charged at the Magistrate's Court Kuala Lumpur for an offence relating to the possession of drugs;
(b) that on 4 February 1990 he was released at the Magistrate's Court Kuala Lumpur, and arrested by the police soon after leaving the Court and detained.

Subsequently on 2 April 1990 the Deputy Minister of Home Affairs (hereinafter referred to as "The Minister") made a detention order directing that the applicant be detained for a period of one year with effect from 2 April 1990 at Pusat Pemulihan Akhlak Pulau Jerajak, Pulau Pinang. The detention order was dated 2 April 1990 and issued under the provisions of s. 6(1) of the Dangerous Drugs Act (Special Preventive Measures) 1985, (Act 311) hereinafter referred to as the "said Act".

The copy of the order of detention dated 2 April 1990 was not signed by the Minister and merely bore rubber stamped words: "T.T. Dato' Megat Junid bin Megat Ayob" in the space intended for his signature.

On 2 April 1991 the applicant was served with a further order of detention whereby his term of detention was extended for a further period of two years with effect from 2 April 1991 (hereinafter referred to as the extension order).

On 15 October 1991 the applicant was transferred from the Rehabilitation Centre Pulau Jerajak to the Rehabilitation Centre at Simpang Renggam, Johore. On 31 October 1991 the Minister revoked the extension order effective from 1 April 1991 and served on the applicant on 1 April 1991.

The main contention of the applicant has been that the copy of the detention order dated 2 April 1990 whereby he was ordered to be detained at the Rehabilitation Centre at Pulau Jerajak was not signed by the Minister. As such the unsigned copy of the order served at the applicant was not a copy within the meaning of s. 9(1) of the Act, and as such the provisions of s. 9(1) of the said Act had not been complied with and consequently the order made by the Minister is invalid and the continued detention of the applicant was illegal. It was further argued on behalf of the applicant by his Counsel that since the first order of detention dated 2 April 1990 was invalid the subsequent revocation of the order detaining the applicant for a period of two years with effect from 1 April 1991 was of no legal effect.

As stated by Hashim Yeop Abdullah Sani (as he then was) in the case of *PP v. Koh Yoke Koon* [1988] 2 MLJ 301:

detention not in accordance with law is inconsistent with the fundamental right guaranteed under article 5(1) of the Constitution. Where a law deals with detention, there are abundant authorities to show that the provisions of such a law must be construed strictly and in the case of doubt the Court should lean in favour of the subject.

In the case of *Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1990] 2 MLJ 297 the learned Chief Justice (Malaya) stated very succinctly his views on preventive detention:

We are fully conscious of the government's effort to combat the drug menace in this country. But there is a fundamental principle involved here. The power to detain a person without trial cannot be exercised by inference. The power must be expressed, clear and unequivocal. Where detention law and the liberty of the individuals are concerned, this is the most correct approach for the Courts to apply. There is hardly any need to repeat what has been said on the principle to be followed by the Courts in dealing with detention law. The principles were emphasized in Re Tan Boon Liat @ Allen & Anor. at p.114 reiterated by this Court in *PP v. Koh Yoke Koon and Tan Hoon Seng v. Minister of Home Affairs.* The appeals are allowed.

In this case I hold that the initial order of detention dated 2 April 1990 was invalid, since the applicant was served an unsigned copy of the order whereby the provision of Article 9(1) of the Act had not been complied with. This particular point has been dealt with in the case of *Lee Weng Kin v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.* [1991] 2 MLJ 474 where Wan Yahya J echoing the views of the Court stated:

The law on preventive detention under the Internal Security Act 1960, as in the Restricted Residence Enactment 1933, involves the deprivation or serious curtailment of a citizen's personal liberty and as such it must be subjected to strict judicial interpretation. A citizen whose personal liberty is about to be deprived or seriously restricted has the right to be notified, in the most authentic manner, the order which has been made against him.

Since the order dated 2 April 1990 made by the Minister is held to be null and void, any revocation of the subsequent extension order could not cure the defect in the order dated 2 April 1990. The initial defect in the first order of detention dated 2 April 1990, could not be rectified by the subsequent order of detention with effect from 1 April 1991 and the revocation order dated 31 October 1991.

In *Ex parte Johannes Choeldi & Ors.* [1960] MLJ 184 Rigby J said to the effect that where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. Where the detention is not in accordance with law such detention is bad and the person is entitled to be released forthwith.

According to the affidavit filed by the applicant's wife, Madam Lu Lai Kuen dated 12 November 1991 the applicant is alleged to have been placed in the custody of the police at the Police Station Kluang, Johore after the Minister has revoked the detention order. This allegation had not been denied by the Minister in his affidavit dated 11 November 1991. No explanation was given under what provisions of the law the applicant was detained at the Police Station Kluang.

The initial period of the detention being proved to be technically defective, I have no alternative but to hold that the continued detention of the applicant is consequently bad in law. I therefore make a formal order granting *habeas corpus* and setting the applicant free.

Application allowed.

Also found at [1992] 2 CLJ 900